

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-13-1-5-00356-16
45-004-15-1-5-01841-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-09-04-476-011.000-004
Assessment Years: 2013, 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2015 assessments of his property located at 9309 Sunrise Boulevard in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential lot at \$4,600 (land only) for both 2013 and 2015.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On January 13, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: Property record card (“PRC”) for 2015-2019
 - Petitioner Exhibit B: PRC for 2012-2015
 - Petitioner Exhibit C: PRC for 2011-2013
 - Petitioner Exhibit D1: GIS map
 - Petitioner Exhibit D: Cover letter for Kovachevich appraisal for 739-29 W. 35th Avenue, Gary
 - Petitioner Exhibit E: PRC for 739-29 W. 35th Avenue (2015-2019)
 - Petitioner Exhibit F: Cover letter for Kovachevich appraisal for 2517-2525 Washington Street, Gary

Petitioner Exhibit G: PRC for 2517 Washington Street (2015-2019)
Petitioner Exhibit H: PRC for 2521 Washington Street (2015-2019)
Petitioner Exhibit I: PRC for 2525 Washington Street (2015-2019)
Petitioner Exhibit J: Cover letter for Kovachevich appraisal for 1109
Oklahoma Street, Gary
Petitioner Exhibit K: PRC for 1109 Oklahoma Street (2015-2019)
Petitioner Exhibit L: 2019 tax bill for 1109 Oklahoma Street¹

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
6. The property's assessment did not change from 2012 to 2013 or from 2014 to 2015. Nowacki therefore bears the burden of proof for both years under appeal.

OBJECTIONS

7. The Assessor objected to Petitioner Exhibits D-L, claiming that they were not relevant to the proceeding. He also argued that the supporting appraisals are not admissible as they were prepared solely for use by the Assessor's office, and Nowacki is not an intended or authorized user. Nowacki contends that he legally requested and received the appraisals from a current employee of the Lake County Assessor's Office. The ALJ took the objections under advisement. In that the exhibits do provide information regarding other Gary properties that Nowacki alleges are comparable to the subject, they do have at least minimal relevance to this proceeding. The Board is in no position to know or address how Mr. Nowacki obtained these documents. Further, the Assessor's admissibility objection does not cite to any legally recognized basis for the objection. Admissibility is the result of a ruling on an objection, not the basis for the objection. We therefore overrule the objections, and note that these exhibits do not affect the outcome.

¹The Assessor submitted no exhibits.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. The subject property has churned through the system for 40 years since 1971 because it is over-assessed which is why Nowacki was able to purchase it for the nominal price of \$25. Had the Assessor correctly assessed the property there would have been more interest at the auction. The property's value was reduced after he purchased it in 2010, but it is still 50% higher than the assessed value should be. There is a direct correlation between the assessed value on a property for purposes of taxation, and the value of that property from a market standard. If a property is over-assessed, the market value goes down. If taxes are too high, the market value goes down. The costs associated with owning a property have a direct relationship to the value the market will pay for that property. *Nowacki testimony; Pet'r Exs. A, B, C, D1.*
 - b. Nowacki contends the characteristics on the PRC are incorrect. Utilities are not available. The streets and roads are shown as unpaved, but there are no streets or roads at all. The neighborhood has the curious life-cycle designation of "other". The property is valued on a front foot basis, but there is no frontage because the road ends before it reaches the property. The land should be valued on an acreage basis because it is completely surrounded by unimproved property similar to a lot he owns at 620 Warrick. If the property was valued as acreage, its value would be \$1,600. Valuing it as acreage would bring the value closer to Nowacki's proposed value of \$3,200. He is willing to stand with the \$3,200 value, but believes even that value is too high. *Nowacki testimony; Pet'r Exs. A, B, C.*
 - c. Exhibits D-L should be accepted as comparables. If they are not comparable in proximity, they are comparable in the sense that they show the pervasive, overarching, extremely prevalent over-assessment of vacant lots across the city. The appraisals contain a "land comparison approach" which shows the values of 25-30 properties which were used in valuing these three parcels. Appraisals for the three properties show they are over-assessed by 520% to 3,400%. Nowacki legally requested and obtained the appraisals through a current employee at the Lake County Assessor's Office. The overassessment of property is destroying the city. *Nowacki testimony; Pet'r Exs. D-L.*
9. The Assessor's case:
 - a. The parcel is in a platted sub-division. There is a dedicated street on the plat, however it is not paved. The Auditor and Assessor recognize it as a street. Nowacki's claim that this parcel should be valued as acreage as opposed to front footage is not necessarily true. Parcels in platted sub-divisions are valued on a front footage basis. Exhibits D-L do not relate to the subject property. Nowacki has

presented no substantive evidence relating to the value of the subject property. The Assessor's office does not recognize the Warrick property evidence, and believe it is irrelevant to this proceeding. The Assessor requests no change to the assessed value for either year. *Metz testimony*.

ANALYSIS

10. Nowacki failed to make prima facie case for a reducing the property's 2013 or 2015 assessments. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id*; *see also*, *Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Normally a party does not make a case for changing an assessment simply by showing how the DLGF's assessment guidelines should have been applied. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") Instead, the party must offer relevant market-based evidence. *See id.* March 1st was the assessment date for both 2013 and 2015. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the assessment should be \$3,200 for both 2013 and 2015, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- d. Nowacki claims that the appraisals show the three comparable properties are over-assessed, therefore the subject property must also be over-assessed. We interpret and address this argument as a challenge to the uniformity and equality of his assessment. The Tax Court has previously held, “when a taxpayer challenges the uniformity and equality of his or her assessment, one approach he or she may adopt involves the presentation of assessment ratio studies which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals.” *Westfield Golf Practice Ctr., LLC v. Wash. Twp. Ass’r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that property’s owner may be entitled to an equalization adjustment. *See Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed).
- e. Nowacki’s data for the three properties is insufficient to support a uniform and equal argument. Not only did Nowacki provide incomplete appraisals, he failed to compare the properties or their attributes to show whether they were similar or address any differences. Although Nowacki presented data for other Lake County properties, he did not show that his incomplete data met the standards of a ratio study or constituted a statistically reliable sample.
- f. Nowacki further contends the land should be assessed on an acreage basis rather than the front-footage method which the Assessor used to calculate the value. He also claims that the characteristics on the property record card are not accurate. These arguments go solely to the methodology used by the Assessor. Nowacki did not show how changes to the property record card would affect the market value-in-use of the property. Even if the Assessor made errors, simply attacking their methodology is insufficient. *Eckerling* at 678. Instead, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*
- g. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2013 or 2015, he failed to make a prima facie case for lower assessments. Where a Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the assessments.

ISSUED: April 15, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.